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CLERY, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *WTS* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THOMAS W. FLORENCE,
Inmate No. 01729344,

Plaintiff,

vs.

CRICKET CELL PHONE
COMMUNICATIONS,

Defendant.

Civil No. 13cv1723 BEN (JMA)

ORDER:

**(1) DISMISSING CIVIL ACTION
WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO
PROCEED *IN FORMA PAUPERIS*
PURSUANT TO
28 U.S.C. § 1915(a); AND**

**(2) DENYING MOTION TO
DISMISS AS MOOT**

Plaintiff, an inmate currently incarcerated at the James V. Allred Unit located in Iowa Park, Texas, and proceeding pro se, has filed a civil action in this Court. (ECF No. 1.) Defendant has filed a Motion to Dismiss (ECF No. 2), which is DENIED as moot in light of the Court's findings below.

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1 **I. Failure to Pay Filing Fee or Request IFP Status**

2 All parties instituting any civil action, suit or proceeding in any district court of
3 the United States, except an application for writ of habeas corpus, must pay a filing fee
4 of \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a party's failure to
5 pay this filing fee only if the party is granted leave to proceed *in forma pauperis* ("IFP")
6 pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th
7 Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

8 Plaintiff has not prepaid the \$400 in filing and administrative fees required to
9 commence a civil action, nor has he submitted a Motion to Proceed IFP pursuant to 28
10 U.S.C. § 1915(a). Therefore, the case cannot yet proceed. *See* 28 U.S.C. § 1914(a);
11 *Andrews*, 493 F.3d at 1051.

12 **II. Conclusion and Order**

13 For the reasons set forth above, the Court hereby:

14 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the
15 \$400 civil filing and administrative fee or submit a Motion to Proceed IFP pursuant to
16 28 U.S.C. §§ 1914(a) and 1915(a); and

17 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is
18 filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; *or*
19 (b) complete and file a Motion to Proceed IFP which includes a certified copy of his trust
20 account statement for the 6-month period preceding the filing of his Complaint. *See* 28
21 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).

22 (3) **DENIES** Defendant's Motion to Dismiss as MOOT.

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27 ¹ In addition to the \$350 statutory fee, all parties filing civil actions on or after May 1, 2013,
28 must pay an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference
Schedule of Fees, District Court Misc. Fee Schedule) (eff. May 1, 2013). However, the additional \$50
administrative fee is waived if the plaintiff is granted leave to proceed IFP. *Id.*

1 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff
2 with this Court's approved form "Motion and Declaration in Support of Motion to
3 Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400 civil filing fee
4 or complete and submit the enclosed Motion to Proceed IFP within that time, this action
5 shall remain dismissed without prejudice and without further Order of the Court.

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7 DATED: 8/10/13


8 HON. ROGER T. BENITEZ
9 United States District Judge
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